IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.3329 OF 2005

Vijay Laxman Chaugule ..Applicant

V/s.

The State of Maharashtra ..Respondent

Mr.Sanjeev Kadam with Mr.Avinash Patengale with Mr.Prashant D.Jadhav for the applicant.

Mr.V.B.Konde-Deshmukh Additional Public Prosecutor for the Respondent/State.

Coram : R.S.MOHITE,J

Date : 16.05.2005.

PC

1. This is an application made by the applicant Mr.Vijay Laxman Chaugule for grant of anticipatory bail. The applicant is one of the accused in C.R.No.I-239/2004 registered at the Rabale police station, New Bombay for offences under Sections 302, 307, 147, 148, 149, 343, 452, 443, 427, 429, 120-B read with Section 34 of IPC, and 37(1) and 135 of the Bombay Police Act and section 4 read with section 25 (A) (H) of the Indian Arms Act. The said C.R. has been registered on the complaint made by one Smt.Vibhuti Vilas Jadhav who is the wife of the deceased Vilas Jadhav.

2. I have heard both the parties. The learned APP appearing for the Respondent/State has produced the entire record and I have gone through the same. The Investigating officer is present in Court.

3. The incident in question which forms the basis of the Complaint occured on 7.7.2004. It is alleged that 4 persons broke into the house of the deceased and assaulted him with a stick and choppers. These 4 persons were Rinku Singh, Tanaji Patil, Sunil Bhosale and one un-known person who in the course of investigation is alleged to be Ravindra Somnath Kawle. It may be mentioned here that the 4 main assailants of the deceased were arrested in the course of the investigation and all 4 have been released on bail on the merits of their case.

4. The present applicant is an influential person in the sense that he is sitting Corporator and at the relevant time a Director of CIDCO, Navi Mumbai. It is alleged that the applicant was on enmical terms with the deceased since November-2003 and that the enmity arose from a dispute regarding setting up of the Ganpati idol in Ram Nagar locality.

5. After the registration of this offence in July-1004, the present applicant preferred an

anticipatory bail application being Anticipatory Bail Application No.843 of 2004 in the Sessions Court. This anticipatory bail application came to be finally disposed of on 28.7.2004. The Sessions Court in its order recorded that there was no legally admissible material against the present applicant and that the Investigating officer had not been able to place before him any material which even remotely suggested conspiracy between the applicant and the actual assailants. That in the circumstances, normally the applicant would have been entitled to grant of anticipatory bail. However, only on account of the fact that the allegations were serious, instead of granting anticipatory bail, he gave protection to the applicant and directed that police will give 72 hours written notice to the applicant if they intend to arrest him.

6. Three months after passing of this order, on 28.10.2004, the police recorded the statement of one Devidas Kharge. In his statement Devidas has stated that on a day which he does not specify but which was 13 to 14 days prior to the incident he was sitting alone in a ladies bar known as Chandani Bar. At that time, he claims to have heard conversation between the applicant and 2 of the assailants by name Sunil Bhosale and Tanaji Patil. He claims to

have heard the applicant telling these 2 assailants that they should make a game of the deceased. This witness has further stated in his statement that upon hearing this, he went to the deceased. The deceased told him that the matter was not serious. He however, admits that he learnt about the murder of the deceased which occured on 7.7.2004. Inspite of learning about this, for about 3 & 1/2 months this witness claims to have been made no disclosure to the police or any other independent party for 3 & 1/2 months. It also appears from his statement that he was brought to the police station by the brother of the deceased and only thereafter his statement was recorded by the police. On making enquiry as to whether the Investigating officer has made any attempt to verify the truth of the statement, particularly by checking with the owner and staff of the Chandani bar, I am informed that there is no such attempt made by the Investigating officer and therefore, there is nothing to substantiate the truth of his statement.

7. Immediately thereafter on 31.12.2004 the Police have recorded the statement of one Prashant Kamre. In his statement Prashant Kamre states that he had gone to Satara in his Sumo and on the way back his Sumo stopped because of mal function in Rabale area. He decided to sit out the night in the Sumo. At

about 12.30 to 1.00 A.M., he heard the applicant telling the same 2 assailants i.e. Sunil Bhosale, Tanaji Patil and one Rinku Singh that game should be made of the deceased. This witness had also not disclosed anything to either the Police or anyone else for a period of about 3 & 1/2 months. He claims to have heard this conversation 2 to 3 days before the incident. He claims that he did not make any disclosure because he was afraid of the applicant. But nothing has been placed on record as to whether he has any dealing with the applicant and as to why he had any reason to be afraid of the present applicant. His statement also indicates that he was on close terms with the deceased.

8. The statement of Gangabai Jadhav is not in respect of any conspiracy but in respect of an old incident of enemity and threat which said to have been taken place in November-2003 i.e. about 8 months prior to the incident.

9. Another peculiar circumstance is that though the statement of these 2 witnesses viz. Devidas and Prashant were recorded on 28.10.2004 and 31.10.2004 the police officer chose not to give the 72 hours notice as contemplated by the order of the Sessions Court for a period of about 6 months thereafter. During this period, they have also made no attempt

to verify the truth of the statement made by Prashant and Devidas which could easily have been done.

10. The present applicant after receiving the 72 hours notice filed Anticipatory bail application no.454 of 2005 in the Sessions Court on 26.4.2005. His anticipatory bail application came to be rejected on 29.4.2005. In this circumstances, he has moved the present application.

11. Prima facie at this stage, I find that statements of Devidas and Prashant are belated and contain no reasonable explanation as to why they have made no disclosure to the police or anybody else for about three and half months. Their version appears unnatural. In any case this evidence of conspiracy is already on record and even at this stage independent verification which ought to have been done by the police by now can still be done.

12. The learned Sessions Judge has referred to the statement of Devidas, Prashant and Gangabai but has not referred to the salient features and inherent lacunas in these statements. It is correct that no detailed analysis of these statements should be done at this stage but at the same time the Court must not shut its eyes to any weak, suspicious and

unconvincing circumstances relating to them.

13. In this view of the matter, I am inclined to grant anticipatory bail and it is directed that in the event of arrest, the applicant be released on bail in the sum of Rs.1,00,000/- with one surety in the like amount. The applicant will deposit his passport with the Investigating officer. He will also report to the Investigating officer Sr.P.I. Nasir Pathan who has been transferred to Taloja police station but continues investigating the case, twice a week till the charge-sheet is filed. The applicant will make no attempt to contact any witness in this case or tamper with the evidence. It is made very clear that these observations are prima facie and will not be taken into account at any stage of the trial. With these observations and directions, the anticipatory bail application is disposed of.

. Parties to act on an ordinary copy of this order duly authenticated by the Personal Secretary/Court sheristedar of this court as a true copy.

(R.S.Mohite,J)